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## **BEST AVAILABLE IMAGES**

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**DECLARATION, POWER OF ATTORNEY AND  
STATEMENT CLAIMING SMALL ENTITY STATUS**

We, Steven P. DenBaars, Eric J. Tarsa, Michael Mack, Bernd Keller and Brian Thibeault, declare: We are citizens of the United States of America, residing at Goleta, California; Goleta, California; Santa Barbara, California; Goleta California and Santa Barbara, California, respectively. We believe we are the original, first and joint inventors of the invention entitled "MULTIPLE ELEMENT, MULTIPLE COLOR SOLID STATE LED" described and claimed in the attached specification. We have reviewed and understand the contents of the specification, including the claims. We acknowledge a duty to disclose information of which we are aware that is material to the examination of this application in accordance with 37 C.F.R. §1.56(a).

**SMALL ENTITY STATUS STATEMENT**

We further declare that we qualify as independent inventors as defined in 37 C.F.R. §1.9(c) for purposes of paying reduced fees under 35 U.S.C. §§41(a) and (b) to the Patent and Trademark Office with regard to this invention.

We have not assigned, granted, conveyed or licensed and am under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor under 37 C.F.R. §1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 C.F.R. §1.9(e).

We acknowledge the duty to file, in this application or the patent issuing on this application, notification of any change in status resulting in loss of entitlement to small entity status before paying or at the time of paying the earliest of: (1) the issue fee or (2) any maintenance fee, which is due after the date on which status as a small entity is no longer appropriate. (37 C.F.R. §1.28(b))

We declare further that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of this application or any patent issuing from this application.

**POWER OF ATTORNEY**

We hereby appoint Jaye G. Heybl (Reg. No. 42,661) and Richard S. Koppel (Reg. No. 26,475) and whose address is:

**KOPPEL & JACOBS**  
555 St. Charles Drive, Suite 107  
Thousand Oaks, California 91360  
Telephone (805) 373-0060

my attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected with the application.

Wherefore, we subscribe our names to the foregoing specification, claims and declaration.

Date: 12-28, 1999


Post Office Address:

  
Steven P. DenBaars

6266 Marlborough Drive  
Goleta, California 93101

Date: 5 Jan 00, 1999

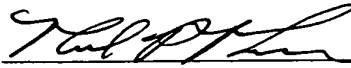
Post Office Address:

  
Eric J. Tarsa

105 Dearborn Place, #41  
Goleta, California 93117

Date: 1/5/00, 1999

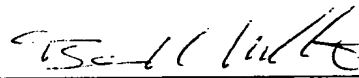
Post Office Address:

  
Michael Mack

1109 Luneta Plaza  
Santa Barbara, California 93109

Date: 1/5/00, 1999


Post Office Address:

  
Bernd Keller

6174 Santa Marguerita Way  
Goleta, California 93117

Date: 12-29, 1999

Post Office Address:

  
Brian Thibeault

1914 Cleveland Avenue  
Santa Barbara, California 93101



C014905-7

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JANUARY 23, 2004

KOPPEL, JACOBS, PATRICK & HEYBL  
JAYE G. HEYBL  
555 ST. CHARLES DRIVE, SUITE 107  
THOUSAND OAKS, CALIFORNIA 91360

PTAS

RECEIVED  
JAN 29 2004  
KOPPEL, JACOBS, PATRICK & HEYBL

\*102501560A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 07/15/2003

REEL/FRAME: 014277/0191  
NUMBER OF PAGES: 9

BRIEF: MERGER (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

CREE LIGHTING COMPANY

DOC DATE: 06/29/2003

ASSIGNEE:

CREE, INC.  
340 STORKE ROAD  
GOLETA, CALIFORNIA 93117

SERIAL NUMBER: 10133530  
PATENT NUMBER: 6620709

FILING DATE: 04/11/2002  
ISSUE DATE: 09/16/2003

SERIAL NUMBER: 09727803  
PATENT NUMBER: 6657236

FILING DATE: 11/28/2000  
ISSUE DATE: 12/02/2003

SERIAL NUMBER: 09528262  
PATENT NUMBER:

FILING DATE: 03/17/2000  
ISSUE DATE:

SERIAL NUMBER: 09721352  
PATENT NUMBER: 6614056

SERIAL NUMBER: 09771800  
PATENT NUMBER: 6586781

SERIAL NUMBER: 09911155  
PATENT NUMBER:

SERIAL NUMBER: 10163944  
PATENT NUMBER:

SERIAL NUMBER: 10102272  
PATENT NUMBER:

SERIAL NUMBER: 10256814  
PATENT NUMBER:

SERIAL NUMBER: 10201345  
PATENT NUMBER:

SERIAL NUMBER: 10144943  
PATENT NUMBER:

SERIAL NUMBER: 10382198  
PATENT NUMBER:

SERIAL NUMBER: 10335915  
PATENT NUMBER:

SERIAL NUMBER: 09328555  
PATENT NUMBER: 6265727

SERIAL NUMBER: 09644875  
PATENT NUMBER: 6498111

SERIAL NUMBER: 09537531  
PATENT NUMBER: 6350041

SERIAL NUMBER: 09728788  
PATENT NUMBER: 6515313

SERIAL NUMBER: 09713576  
PATENT NUMBER: 6410942

FILING DATE: 11/21/2000  
ISSUE DATE: 09/02/2003

FILING DATE: 01/29/2001  
ISSUE DATE: 07/01/2003

FILING DATE: 07/23/2001  
ISSUE DATE:

FILING DATE: 06/06/2002  
ISSUE DATE:

FILING DATE: 03/19/2002  
ISSUE DATE:

FILING DATE: 09/27/2002  
ISSUE DATE:

FILING DATE: 07/23/2002  
ISSUE DATE:

FILING DATE: 05/13/2002  
ISSUE DATE:

FILING DATE: 03/04/2003  
ISSUE DATE:

FILING DATE: 01/02/2003  
ISSUE DATE:

FILING DATE: 06/09/1999  
ISSUE DATE: 07/24/2001

FILING DATE: 08/23/2000  
ISSUE DATE: 12/24/2002

FILING DATE: 03/29/2000  
ISSUE DATE: 02/26/2002

FILING DATE: 11/28/2000  
ISSUE DATE: 02/04/2003

FILING DATE: 11/14/2000  
ISSUE DATE: 06/25/2002

ALLYSON PURNELL, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

07-21-2003



U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

Tab settings

102501560

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
CREE LIGHTING COMPANY

7.15.03

2. Name and address of receiving party(ies)

Name: CREE, INC.

Internal Address:

Street Address: 340 STORKE ROAD

City: Goleta State: CA Zip: 93117

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☒ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Other

Execution Date: 6/29/2003

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s) 10/133,530  
09/727,803, 09/528,262

B. Patent No.(s) 6,265,727B1  
6,498,111B1, 6,350,041B1

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: KOPPEL, JACOBS, PATRICK & HEYBL

Internal Address:

Street Address: 555 ST. CHARLES DRIVE STE. 107

City: THOUSAND OAKS State: CA Zip: 91360

6. Total number of applications and patents involved: ☐

7. Total fee (37 CFR 3.41).....\$ 720.00

☒ Enclosed

☒ Authorized to be charged to deposit account for any deficiency in payment.

8. Deposit account number:

11-1580

FINANCE SECTION

2003 JUL 15 AM 7:48

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07/18/2003 DBYRNE 00000100 10133530

01 FC: 002 Signature. 720.00 00

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JAYE G. HEYBL

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and documents: ☐

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

**Continued 4. APPLICATION NUMBER(S) OR PATENT NUMBER(S):**

**A. Patent Application Nos.**

09/721,352  
09/771,800  
09/911,155  
10/163,944  
10/102,272  
10/256,814  
10/201,345  
10/144,943  
10/382,198  
10/335,915

**B. Patent Nos.**

6,515,313B1  
6,410,942B1

ARTICLES OF MERGER  
OF  
CREE LIGHTING COMPANY  
WITH AND INTO  
CREE, INC.

Cree, Inc., a North Carolina corporation (the "Surviving Corporation"), hereby submits these Articles of Merger for the purpose of merging its wholly-owned subsidiary corporation, Cree Lighting Company, a California corporation (the "Merging Corporation"), with and into the Surviving Corporation (the "Merger"):

1. The Plan and Agreement of Merger between the Merging Corporation and the Surviving Corporation is attached as Exhibit A hereto.
2. The attached Plan and Agreement of Merger was duly approved by the boards of directors of the Surviving Corporation and the Merging Corporation in the manner required by Chapter 55 of the General Statutes of North Carolina and in the manner required by the California Corporations Code.
3. Pursuant to § 55-11-05 of the General Statutes of North Carolina, approval of the Plan and Agreement of Merger was not required by the shareholders of the Surviving Corporation or the Merging Corporation because the Surviving Corporation was the owner of one hundred percent (100%) of the outstanding shares of the Merging Corporation and the Plan and Agreement of Merger does not provide for any changes in the articles of incorporation of the Surviving Corporation.
4. These Articles of Merger and the Merger shall be effective at 11:59 p.m. on June 29, 2003.

Dated as of the 19<sup>th</sup> day of June, 2003.

CREE, INC.

By: Charles M. Swoboda  
Charles M. Swoboda  
President

CREE LIGHTING COMPANY

By: Charles M. Swoboda  
Charles M. Swoboda  
President



## **PLAN AND AGREEMENT OF MERGER**

THIS PLAN AND AGREEMENT OF MERGER is made and dated as of June 18, 2003, between Cree, Inc., a North Carolina corporation (sometimes referred to herein as the "Surviving Corporation"), and Cree Lighting Company, a California corporation (sometimes referred to herein as the "Merging Corporation").

WHEREAS, Cree Lighting Company is a wholly-owned subsidiary of Cree, Inc.;

WHEREAS, the Surviving Corporation and the Merging Corporation desire to effect the merger of the Merging Corporation with and into the Surviving Corporation upon the terms set forth herein;

WHEREAS, the boards of directors of the Surviving Corporation and the Merging Corporation deem it advisable and in the best interests of the parties and their respective shareholders that the Merging Corporation merge with and into the Surviving Corporation under and pursuant to the provisions of the North Carolina Business Corporation Act, as amended, and the California Corporations Code, as amended; and

WHEREAS, the boards of directors of the Surviving Corporation and the Merging Corporation by resolution duly approved this Plan and Agreement of Merger;

NOW, THEREFORE, the parties hereto do hereby approve and adopt this Plan and Agreement of Merger for the purpose of setting forth the terms and conditions of the merger referred to above and the mode of carrying the same into effect.

### **ARTICLE I**

#### **THE MERGER**

1.1 **Merger.** Cree Lighting Company shall be merged with and into Cree, Inc., with Cree, Inc. as the Surviving Corporation (the "Merger") pursuant to Article 11 of the North Carolina Business Corporation Act, as amended (the "NCBCA"), and Chapter 11 of the California Corporations Code, as amended (the "CCC"). The name of the Surviving Corporation will continue to be "Cree, Inc."

1.2 **Effective Time.** The Merger shall be effected by the filing of Articles of Merger with the Secretary of State of North Carolina in accordance with the provisions of Article 11 of the NCBCA, and by the filing of a Certificate of Ownership with the Secretary of State of California in accordance with the provisions of Chapter 11 of the CCC. The time and date when the Merger shall become effective is 11:59 p.m. on June 29, 2003 and is herein referred to as the "Effective Time."

1.3 Effect of the Merger. At the Effective Time, the separate corporate existence of Cree Lighting Company shall cease, and Cree, Inc., as the Surviving Corporation, shall continue its corporate existence under the laws of the State of North Carolina and shall thereupon and thereafter possess all of the rights, privileges, immunities, powers, and franchises of Cree Lighting Company and Cree, Inc.; all of the property (real, personal, and mixed) and every other asset of the Merging Corporation shall vest in the Surviving Corporation without reversion or impairment and without further act or deed; the Surviving Corporation shall assume and be liable for all the liabilities and obligations of the Merging Corporation; and all other effects of the Merger specified in Article 11 of the NCBCA and Chapter 11 of the CCC shall result therefrom. This Plan and Agreement of Merger shall be deemed a plan of liquidation for purposes of federal income taxation.

## ARTICLE II

### CANCELLATION OF SHARES

2.1 Cancellation of Shares. Immediately upon the Effective Time, (i) each issued and outstanding share of Common Stock of the Merging Corporation shall be cancelled; and (ii) the outstanding shares of Common Stock of the Surviving Corporation immediately prior to the Effective Time shall not be converted or altered in any manner as a result of the Merger; and (iii) accordingly, the shares of Common Stock of the Surviving Corporation held by the shareholders thereof immediately prior to the Effective Time shall represent the entire issued and outstanding shares of Common Stock of the Surviving Corporation.

## ARTICLE III

### ARTICLES OF INCORPORATION, BYLAWS, DIRECTORS, AND OFFICERS

3.1 Articles of Incorporation and Bylaws. The Articles of Incorporation and Bylaws of the Surviving Corporation shall be identical to the Articles of Incorporation and Bylaws of Cree, Inc. in effect immediately prior to the Effective Time until thereafter amended as provided by law.

3.2 Directors and Officers. The members of the Board of Directors and the officers of the Surviving Corporation immediately after the Effective Time shall be those persons who were members of the Board of Directors and the officers, respectively, of Cree, Inc. immediately prior to the Effective Time, and such persons shall serve in such offices, respectively, for the terms provided by law or in the Bylaws.

#### ARTICLE IV

##### SUBMISSION TO SHAREHOLDERS: ABANDONMENT

4.1 Shareholder Approval. This Plan and Agreement of Merger and the Merger need not be submitted to the sole shareholder of the Merging Corporation or the shareholders of the Surviving Corporation for their approval under the NCBCA and the CCC, as applicable.

4.2 Abandonment. At any time prior to the filing of the Articles of Merger, the Boards of Directors and the officers of Cree Lighting Company and of Cree, Inc. may, in their discretion, abandon the Merger without any further shareholder action.

#### ARTICLE V

##### MISCELLANEOUS

5.1 Headings. The article and section captions used herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Plan and Agreement of Merger.

5.2 Waiver of Notice. The parties hereto waive all notice with respect to this Plan and Agreement of Merger or the Merger as may be required by the NCBCA and the CCC, as applicable, including but not limited to the mailing requirement set forth in Section 55-11-04 of the NCBCA.

5.3 Counterparts; Execution. This Plan and Agreement of Merger may be executed in two or more counterparts, all of which taken together shall constitute one instrument. This Plan and Agreement of Merger may be executed by facsimile.

IN WITNESS WHEREOF, Cree, Inc. and Cree Lighting Company have caused this Plan and Agreement of Merger to be duly executed and delivered by their respective officers thereunto duly authorized, all as of the day and year first above written.

CREE, INC.

By: Charles M. Swoboda  
Charles M. Swoboda, President

CREE LIGHTING COMPANY

By: Charles M. Swoboda  
Charles M. Swoboda, President

## CERTIFICATE OF OWNERSHIP

JUN 29 2003

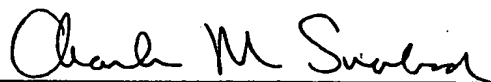
KEVIN SHELLEY  
Secretary of State

Charles M. Swoboda and Adam H. Broome certify that:

1. They are the president and secretary, respectively, of Cree, Inc., a North Carolina corporation (the "Corporation").
2. The Corporation owns all of the outstanding shares of Cree Lighting Company, a California corporation.
3. The board of directors of this Corporation duly adopted the following resolution:

RESOLVED, that this Corporation merge Cree Lighting Company, its wholly-owned subsidiary corporation, into itself and assume all its obligations pursuant to Section 1110, California Corporations Code.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct and of our own knowledge.

DATE: June 18, 2003

Charles M. Swoboda, President



Adam H. Broome, Secretary





# NORTH CAROLINA

## Department of The Secretary of State

---

To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

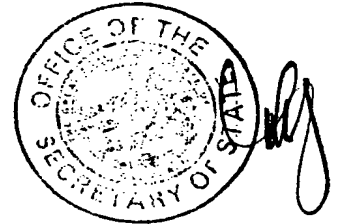
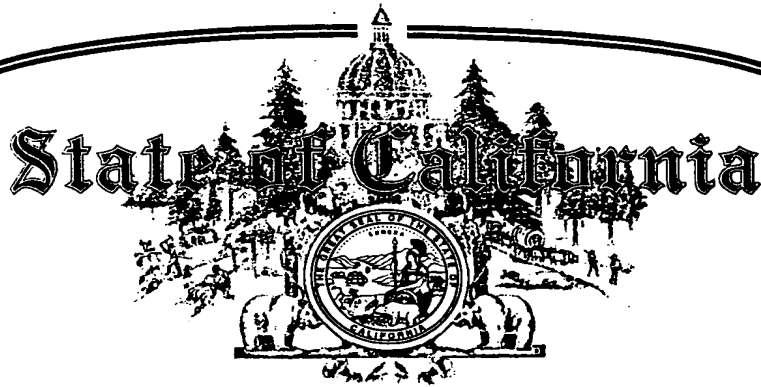
**ARTICLES OF MERGER**  
**OF**  
**CREE LIGHTING COMPANY**  
**INTO**  
**CREE, INC.**

the original of which was filed in this office on the 23rd day of June, 2003.



IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed my official seal at the  
City of Raleigh, this 23rd day of June, 2003

*Elaine F. Marshall*  
Secretary of State



## SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

JAN 20 2003



*Kevin Shelley*  
Secretary of State



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

OCTOBER 19, 2000

PTAS

KOPPEL & JACOBS  
JAYE G. HEYBL  
555 ST. CHARLES DRIVE  
SUITE 107  
THOUSAND OAKS, CA 91360



\*101449296A\*

RECEIVED

OCT 31 2000

KOPPEL & JACOBS

**UNITED STATES PATENT AND TRADEMARK OFFICE  
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THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 08/07/2000

REEL/FRAME: 011036/0843  
NUMBER OF PAGES: 10

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
NITRES, INC.

DOC DATE: 05/01/2000

ASSIGNEE:  
CREE LIGHTING COMPANY  
107 SOUTH LA PATERA LANE  
GOLETA, CALIFORNIA 93117

SERIAL NUMBER: 09528262  
PATENT NUMBER:

FILING DATE: 03/17/2000  
ISSUE DATE:

DIANE RUSSELE, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

09-06-2000



585-27-009

Revised Form PTO-1595  
(Rev. 6-93)  
OMB No. 0651-0011 (exp. 4/94)

RE

101449296

U.S. Department of Commerce

Patent and Trademark Office

8.7.00

**PATENTS ONLY**

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
NITRES, INC.

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies):

Name: CREE LIGHTING COMPANY

Internal Address:

Street Address: 107 South La Patera Lane

City: Goleta State: CA Zip: 93117

Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:

Assignment

Merger

Security Agreement

X

Change of Name  
(see section 1.3 of  
attached agreement)

Other

Execution Date: May 1, 2000

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

09/528,262

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence  
concerning document should be mailed:

Name: Jaye G. Heybl

Internal Address: Koppel & Jacobs

Street Address: 555 St. Charles Drive, Suite 107

City: Thousand Oaks State: CA Zip: 91360

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

☒ Enclosed

☐ Authorized to be charged to deposit account.

8. Deposit account number: 11-1580

☒ The Commissioner is hereby authorized to charge any  
additional filing fees which may be required or credit  
any overpayment to Deposit Account No. 11-1580

09/05/2000 JSHABAZZ 00000068 09528262

01 FC:581

40.00 DP

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document

JAYE G. HEYBL

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 14

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231



A0544922

ENDORSED - FILE  
in the office of the Secretary of State  
of the State of California

MAY - 1 2000

## AGREEMENT OF MERGER

BILL JONES, Secretary of State

THIS AGREEMENT OF MERGER (the "Agreement of Merger") is made and dated as of May 1, 2000 by and among Cree, Inc., a corporation incorporated under the laws of the State of North Carolina (the "Purchaser"), Crystal Acquisition, Inc., a corporation incorporated under the laws of the State of North Carolina and wholly-owned subsidiary of the Purchaser ("Merger Sub"), and Nitres, Inc., a corporation incorporated under the laws of the State of California (the "Company").

WHEREAS, the Purchaser, Merger Sub, the Company, and certain of the shareholders of the Company (the "Principal Shareholders") have entered into an agreement dated as of April 10, 2000 (the "Agreement"), which provides for, among other things, the filing of this Agreement of Merger in connection with the merger of Merger Sub with and into the Company, with the Company as the surviving corporation (the "Merger") and the other transactions therein and herein contemplated;

WHEREAS, consistent with and pursuant to the Agreement, the Purchaser, Merger Sub and the Company desire to effect the Merger upon the terms set forth herein;

WHEREAS, the boards of directors of the Purchaser, Merger Sub and the Company and the shareholders of Merger Sub, acting on the recommendation of their respective boards of directors, have approved this Agreement of Merger, and the consummation of the Merger, as set forth therein and herein; and

WHEREAS, the parties to the Merger shall constitute a reorganization within the meaning of Section 1101 of the California Corporations Code of 1986, as amended;

NOW, THEREFORE, the parties hereby approve and adopt this Agreement of Merger for the purpose and on the conditions of the Merger and the means of carrying the same into effect.

ARTICLE I  
THE MERGER

1.1 Merger. Merger Sub shall be merged with and into the Company pursuant to Article 11 of the North Carolina Business Corporation Act, as amended (the "NCBCA"), and Sections 1101 and 1103 of the California Corporations Code, as amended (the "California Code").

1.2 Effective Time. The parties will file articles of merger with the Secretary of State of the State of North Carolina in accordance with the provisions of Article 11 of the NCBCA and will file this Agreement of Merger with the Secretary of State of the State of California in accordance with the provisions of Sections 1101 and 1103 of the California Code. The parties will file this Agreement of Merger on May 1, 2000 (the "Filing Date"). The Merger shall become

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effective at 8:00 a.m. eastern time on the Filing Date. The time and date when the Merger shall become effective is herein referred to as the "Effective Time."

1.3 Effect of the Merger. At the Effective Time, Merger Sub shall be merged with and into the Company in accordance with this Agreement of Merger; the separate existence of Merger Sub shall cease; the Company shall be the surviving corporation (sometimes referred to herein as the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of California, and shall thereupon and thereafter possess all of the rights, privileges, powers and franchises and be subject to all of the restrictions, disabilities, liabilities, and duties of each of the Company and Merger Sub; all of the property, real, personal and mixed, and every other asset of each of Merger Sub and the Company shall vest in the Surviving Corporation without further act or deed; and all other effects of the Merger specified in the NCBCA and the California Code shall result therefrom. As of the Effective Time, the name of the Surviving Corporation shall be "Cree Lighting Company".

## ARTICLE II

### ARTICLES OF INCORPORATION, BYLAWS, DIRECTORS AND OFFICERS

2.1 Articles of Incorporation and Bylaws. The Articles of Incorporation and Bylaws of the Surviving Corporation shall be identical to the Articles of Incorporation and Bylaws of the Company in effect immediately prior to the Effective Time, until thereafter amended as provided by applicable law, except that the name of the Company shall be changed to, and the name of the Surviving Corporation shall be, "Cree Lighting Company", and Article I of the Articles of Incorporation of the Company shall be amended in its entirety to read as follows: "The name of the corporation is "Cree Lighting Company."

#### 2.2 Officers.

The officers of the Surviving Corporation shall be as listed below, each holding office until his or her respective death, resignation, retirement, removal or disqualification, or until his or her respective successor has been duly elected or appointed and qualified as provided in the Bylaws of the Surviving Corporation or by applicable law:

Chairman of the Board  
President and Chief Executive Officer  
Vice President  
Treasurer  
Secretary

F. Neal Hunter  
Fred A. Blum  
Charles M. Swoboda  
Cynthia B. Merrell  
Adam H. Broome

## ARTICLE III

### CONVERSION AND ISSUANCE OF SHARES

#### 3.1 Conversion of Shares

(a) At the Effective Time, by virtue of the Merger and without any action on the part of the holders of shares of common stock, \$.001 par value per share, or preferred stock, \$.001 par value per share, of the Company ("Company Common Stock" and "Company Preferred Stock", respectively, and collectively, the "Company Stock") and subject to the withholding into escrow described in Section 3.2(d) below:

(i) Each issued and outstanding share of Company Common Stock (other than treasury shares and Dissenting Shares (as defined below)) shall be converted into the right to receive 0.84186 shares (the "Exchange Ratio") of Common Stock of the Purchaser ("Purchaser Common Stock") such that each holder of such shares of Company Common Stock shall be entitled to receive the number of shares of Purchaser Common Stock determined by multiplying (A) the number of shares of Company Common Stock held by such holder by (B) the Exchange Ratio (less any fractional share, which shall be eliminated);

(ii) Each issued and outstanding share of Company Preferred Stock (other than treasury shares and Dissenting Shares) shall be converted into the right to receive 0.85460 shares of Purchaser Common Stock (less any fractional share, which shall be eliminated).

(iii) Each outstanding option to purchase shares of Company Common Stock (a "Stock Option") under the Company 1999 Stock Option/Stock Issuance Plan (the "Company Plan"), whether vested or unvested shall be assumed by Purchaser. Accordingly, each Stock Option shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable under such Stock Option immediately prior to the Effective Time (including without limitation any repurchase rights), the number of shares of Purchaser Common Stock determined by multiplying the number of shares of Company Common Stock that were purchasable immediately prior to the Effective Time upon the exercise of such Stock Option by the Exchange Ratio (less any fractional share, which shall be eliminated) at a price per share (rounded up to the nearest whole cent) equal to (A) the exercise price per share of Company Common Stock immediately prior to the Effective Time under such Stock Option divided by (B) the Exchange Ratio; provided, however, that in the case of any Stock Option to which Section 422 of the Code applies ("incentive stock options"), the option price, the number of shares purchasable pursuant to such option, and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code. As soon as practicable after the Effective Time, the Purchaser shall deliver to each holder of Stock Options a notice confirming the foregoing assumption and setting forth such holder's rights pursuant thereto, including the number of shares of Purchaser Common Stock purchasable under the assumed Stock Option and the corresponding exercise price thereunder;

(iv) Each share of Company Common Stock (a) acquired by a Shareholder on the exercise of Stock Options granted by the Company under the Company Plan or (b) otherwise issued by the Company to a Shareholder, which in each case is subject to repurchase rights (collectively, the "Repurchase Rights"), including without limitation Company Common Stock issued pursuant to the Company Plan or pursuant to certain Common Stock Issuance Agreements or certain Common Stock Purchase Agreements between the Company and certain Shareholders (collectively, the "Restricted Shares") shall be

converted into the right to receive shares of Purchaser Common Stock as described in Section 3.1(a)(i) above and the Repurchase Rights and any agreement or instrument evidencing the Repurchase Rights shall be deemed assigned by the Company to Purchaser and shall be deemed assumed by the Purchaser, thereby giving the Purchaser all the rights that the Company would have had under the terms of the Repurchase Rights including the right to repurchase the shares upon the happening of certain events. As soon as practicable after the Effective Time, the Purchaser shall deliver to each holder of Restricted Shares a notice confirming the foregoing assignment and assumption and setting forth such holder's rights pursuant thereto:

(v) Each outstanding warrant to purchase shares of Company Preferred Stock (a "Warrant") shall be deemed to constitute a warrant to acquire, on the same terms and conditions as were applicable under such Warrant immediately prior to the Effective Time, the number of shares of Purchaser Common Stock that would have been received by the holder thereof had the warrant been exercised to purchase Company Preferred Stock immediately prior to the Effective Time (less any fractional share, which shall be eliminated) at a price per share (rounded up to the nearest whole cent) equal to (A) the exercise price per share of Company Preferred Stock immediately prior to the Effective Time under such Warrant multiplied by a fraction the numerator of which shall be the number of shares of Company Preferred Stock for which the Warrant is exercisable and the denominator of which shall be the number of shares of Purchaser Common Stock for which the Warrant is exercisable after the Effective Time. As soon as practicable after the Effective Time, the Purchaser shall deliver to each holder of a Warrant a notice confirming the foregoing and setting forth such holder's rights pursuant thereto, including the number of shares of Purchaser Common Stock purchasable under the Warrant and the corresponding exercise price thereunder; and

(vi) Each share of Company Stock that is owned by the Company, if any, shall automatically be cancelled and retired and shall cease to exist, and no Purchaser Common Stock shall be delivered in exchange therefor.

(b) Capital Stock of Merger Sub. At the Effective Time, by virtue of the Merger and without any action on the part of the holder of shares of common stock, \$.01 par value per share, of Merger Sub ("Merger Sub Common Stock"), each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Date shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock, par value \$.001 per share of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall thereafter evidence ownership of such shares of capital stock of the Surviving Corporation.

### 3.2 Surrender of Certificates; Issuance of Stock

(a) Exchange Procedures. Purchaser hereby designates its transfer agent to act as the Exchange Agent hereunder (the "Exchange Agent"). Promptly after the Effective Time, Purchaser shall make available to the Exchange Agent for exchange in accordance with Section 3.1, through such reasonable procedures as the Purchaser and the Exchange Agent may adopt, certificates evidencing the shares of Purchaser Common Stock issuable pursuant to Sections 3.1(a)(i) and (ii) above in exchange for the shares of Company Stock outstanding

immediately prior to the Effective Time less the number of shares of Purchaser Common Stock to be deposited into the Escrow Fund (defined below) pursuant to Section 3.2(d) below. Upon surrender of a stock certificate representing shares of Company Stock (a "Certificate") for cancellation to the Exchange Agent in accordance with the Purchaser's and Exchange Agent's procedures, the holder of such Certificate shall be entitled to receive in exchange therefor (A) the Exchange Ratio, multiplied by (B) the number of shares represented by the surrendered Certificate. The Certificate so surrendered shall forthwith be cancelled. Until surrendered as contemplated by this Section 3.2(a), each Certificate shall be deemed from and after the Effective Time to represent only the right to receive upon such surrender the merger consideration described above for each share represented by the Certificate. In no event shall the holder of any such surrendered Certificate be entitled to receive interest on any merger consideration to be received in connection with the Merger. Neither the Exchange Agent nor the Purchaser shall be liable to a holder of Company Stock for any merger consideration paid to a public official pursuant to any applicable abandoned property, escheat or similar law. Any payments under this Section 3.2 shall be subject to applicable tax withholding requirements.

(b) No Further Ownership Rights in Company Stock. All shares of Purchaser Common Stock issued upon the surrender for exchange of Certificates in accordance with the terms of the Agreement and this Agreement of Merger shall be deemed to have been issued at the Closing in full satisfaction of all rights pertaining to Company Stock represented thereby.

(c) Lost Company Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by the Purchaser or its transfer agent, the posting by such person of a bond or other indemnification, in such reasonable and customary amount as the Purchaser or its transfer agent may direct, as indemnity against any claim that may be made against the Purchaser, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the shares of Purchaser Common Stock deliverable in respect thereof pursuant to this Agreement of Merger.

(d) Issuances into Escrow. When making the issuances required by Section 3.1 above, and notwithstanding any provision therein to the contrary, the Purchaser shall withhold from the shareholders of the Company (the "Shareholders") (on a pro rata basis according to their respective entitlements thereto as provided in this Article III) and deliver to the Escrow Agent (as defined in the Escrow Agreement referred to in the Agreement) ten percent (10%) of the aggregate number of shares of Purchaser Common Stock issuable to the Shareholders pursuant to Sections 3.1(a)(i) and (ii) above (the "Escrow Fund"), to be held and distributed by the Escrow Agent pursuant to the terms of the Agreement and such Escrow Agreement. All such Purchaser Common Stock shall be issued in the name of the Escrow Agent, as nominee for the beneficial owners of such Purchaser Common Stock.

3.3 Dissenters' Rights. Any shares of Company Stock which immediately prior to the Effective Time are held by shareholders who have properly exercised and perfected, and have not withdrawn or otherwise forfeited, dissenters' or appraisal rights in accordance with California Code Section 1300 et seq. ("Dissenting Shares") shall not be converted into the right to receive shares of Purchaser Common Stock at the Effective Time as provided in Sections

3.1(a)(i) or (ii) above; rather, the holders of Dissenting Shares shall be entitled to receive consideration determined pursuant to California Code Section 1300 et seq.; provided, however, that if any such holder shall have failed to perfect or shall withdraw or lose such holder's dissenter's rights, such holder's shares of Company Stock thereupon shall be deemed to have been converted into the right to receive shares of Purchaser Common Stock as provided in Sections 3.1(a)(i) or (ii) above (subject to the withholding into escrow described in Section 3.2(d) above), and such shares shall no longer be Dissenting Shares. Company agrees that, except with the prior written consent of Purchaser, or as required under the California Code, the Company will not voluntarily make any payment with respect to, or settle or offer to settle, any purchase demand by a holder of Dissenting Shares. Each holder of Dissenting Shares who becomes entitled to payment for such shares pursuant to California Code Section 1300 et seq. shall receive payment therefor from the Surviving Corporation from funds provided by Purchaser (but only after the amount of the payment required therefor shall have been agreed upon or finally determined pursuant to the California Code).

#### ARTICLE IV

#### FURTHER ASSURANCES, TERMINATION AND AMENDMENT, COUNTERPARTS

4.1 Further Assurances. At the Closing and thereafter, each party hereto will execute such further documents and instruments and take such further actions as may reasonably be requested by one or more of the others to consummate the Merger, to vest the Surviving Corporation with full title to all assets, properties, rights, approvals, immunities and franchises of Merger Sub, and to effect the other purposes of the Agreement and this Agreement of Merger.

4.2 Termination. This Agreement of Merger shall terminate automatically if the Agreement shall be terminated pursuant to Section 9.1 thereof.

4.3 Amendment. This Agreement of Merger may not be amended except by a written agreement executed by each of the parties hereto upon approval by the requisite number of shareholders of the parties.

4.4 Counterparts. This Agreement of Merger may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused their respective corporate names to be hereunder subscribed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CREE, INC.

By: \_\_\_\_\_  
Name: Charles M. Swoboda  
President

By: \_\_\_\_\_  
Name: Adam H. Broome  
Secretary

NITRES, INC.

By: Fred A. Blum  
Name: Fred A. Blum  
President

By: Fred A. Blum  
Name: Fred A. Blum  
Secretary

CRYSTAL ACQUISITION, INC.

By: \_\_\_\_\_  
Name: Charles M. Swoboda  
President

By: \_\_\_\_\_  
Name: Adam H. Broome  
Secretary

IN WITNESS WHEREOF, the parties have caused their respective corporate names to be hereunder subscribed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CREE, INC.

By: Charles M. Swoboda  
Name: Charles M. Swoboda  
President

By: Adam H. Broome  
Name: Adam H. Broome  
Secretary

NITRES, INC.

By: \_\_\_\_\_  
Name: Fred A. Blum  
President

By: \_\_\_\_\_  
Name: Fred A. Blum  
Secretary

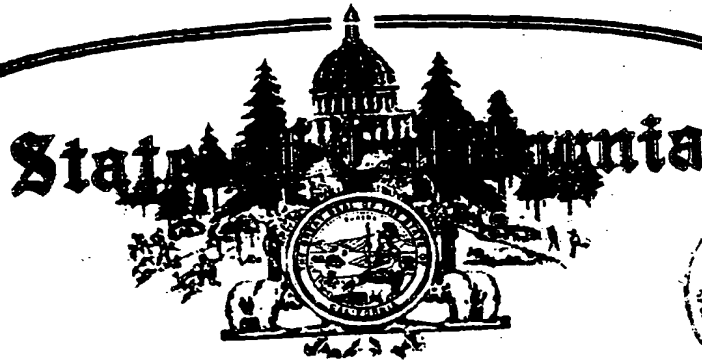
CRYSTAL ACQUISITION, INC.

By: Charles M. Swoboda  
Name: Charles M. Swoboda  
President

By: Adam H. Broome  
Name: Adam H. Broome  
Secretary



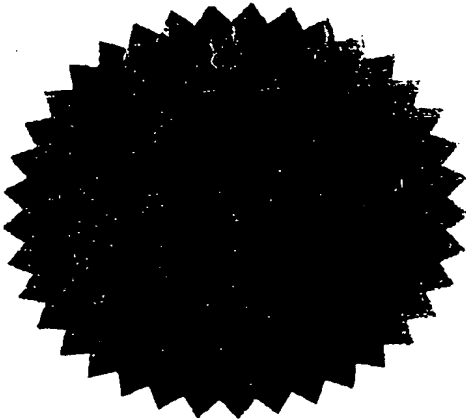
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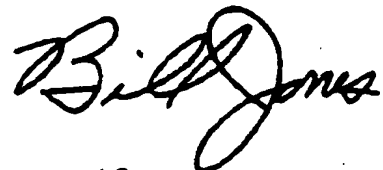
**SECRETARY OF STATE**

I, **BILL JONES**, Secretary of State of the State of California, hereby certify:

That the attached transcript of 17 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of



  
Secretary of State

RECORDATION FORM COVER SHEET

U.S. Department of Commerce

Patent and Trademark Office

**PATENTS ONLY**

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
STEVEN P. DENBAARS, ERIC J. TARSA,  
MICHAEL MACK, BERND KELLER and  
BRIAN THIBEAULT

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

Execution Date: 12-28-99

2. Name and address of receiving party(ies):

Name: NITRES, INC.

Internal Address: \_\_\_\_\_

Street Address: 107 SOUTH PATERA LANE

City: GOLETA State: CA Zip: 93117

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: JANUARY 5, 2000

A. Patent Application No.(s)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: JAYE G. HEYBL

Internal Address: Koppel & Jacobs

Street Address: 555 St. Charles Drive, Suite 107

City: Thousand Oaks State: CA Zip: 91360

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41) ..... \$ 40.00

- ☒ Enclosed  
☐ Authorized to be charged to deposit account.

8. Deposit account number: 11-1580

- ☒ The Commissioner is hereby authorized to charge any additional filing fees which may be required or credit any overpayment to Deposit Account No. 11-1580

**DO NOT USE THIS SPACE**

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document*

JAYE G. HEYBL

Name of Person Signing

  
Signature

MARCH 17, 2000

Date

Total number of pages including cover sheet, attachments, and document: 2

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

**ASSIGNMENT**

We, Steven P. DenBaars, residing at Goleta, California; Eric J. Tarsa, Goleta, California; Michael Mack, Santa Barbara, California; Bernd Keller, Goleta, California; and Brian Thibeault, Santa Barbara, California, represent that we have invented improvements in a new and useful "MULTIPLE ELEMENT, MULTIPLE COLOR SOLID STATE LED", for which we have executed an application for Letters Patent of the United States of America on the same day as our execution of this Assignment.

Nitres, Inc. is a corporation organized and existing under the laws of the State of California, has a place of business at 107 South La Patera Lane, Goleta, California, 93117, and desires to acquire the entire right, title and interest in and to the invention, application and letters patent to be granted and issued thereon.

For valuable consideration, the receipt and legal sufficiency of all of which we acknowledge, we have sold and do hereby sell, assign, transfer and set over unto Nitres, Inc., its successors and assigns, the entire right, title and interest in and to the invention and all improvements thereon, in and to the application for letters patents thereon, in and to applications pertaining to or based upon the invention and application, including divisional and continuing applications and continuations-in-part, and in and to any and all letters patent which may be granted and issued on the invention and applications, or any of them, in the United States of America, its territories and possessions, and in all countries foreign thereto, together with and including all priority rights based upon any and all applications in the United States of America covered by this Assignment.

We also agree that we will, at the request of Nitres, Inc., execute any and all applications for letters patent for the invention, execute any and all other papers and documents and do all other and further lawful acts that Nitres, Inc. may deem necessary or desirable to obtain letters patent on the invention, to secure the grant of such letters patent and to protect and vest in Nitres, Inc. the undivided interests in the right, title and interest in the invention, applications and letters patent.

We also authorize and empower Nitres, Inc., its successors and assigns to apply for and obtain, in its or their own names, letters patent for the invention before competent International Authorities and in any and all countries foreign to the United States in which applications for letters patent can be so made or letters patent so obtained.

EXECUTED at Goleta, County of Santa Barbara, and State of California  
this 28 day of December, 1999



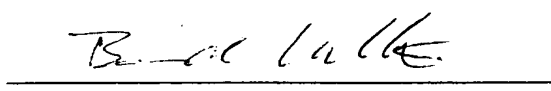
Steven P. DenBaars



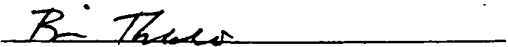
Eric J. Tarsa



Michael Mack



Bernd Keller



Brian Thibeault